

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Keith Richard Rossberg,

Civil No. 17-719 (DWF/SER)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Warden Eddie Miles,

Respondent.

This matter is before the Court upon Petitioner Keith Richard Rossberg's objections (Doc. No. 15) to Magistrate Judge Steven E. Rau's October 24, 2017 Report and Recommendation (Doc. No. 14) insofar as it recommends that: (1) Respondent Warden Eddie Miles's Motion to Dismiss Petition for Writ of Habeas Corpus be granted; (2) Petitioner Keith Richard Rossberg's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied; (3) that this action be dismissed with prejudice; and (4) if the Report and Recommendation is adopted, a certificate of appealability not be issued, and judgment be entered accordingly. Respondent Warden Eddie Miles filed a response to Petitioner's objections on November 8, 2017. (Doc. No. 17.)

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference

for purposes of Petitioner's objections. In the Report and Recommendation, Magistrate Judge Rau concluded that Petitioner's Petition is untimely, and that equitable tolling does not apply. Petitioner argues that the Magistrate Judge made factual errors in the discussion of the background of the case, and again argues that equitable tolling should apply. Having carefully reviewed the record, the Court concludes that Petitioner's objections do not warrant departure from the Magistrate Judge's recommendations. In particular, the Magistrate Judge properly calculated the time that passed prior to Petitioner's filing of the present action and concluded that equitable tolling does not apply.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Keith R. Rossberg's objections (Doc. No. [15]) to Magistrate Judge Steven E. Rau's October 24, 2017 Report and Recommendation are

OVERRULED.

2. Magistrate Judge Steven E. Rau's October 24, 2017 Report and Recommendation (Doc. No. [14]) is **ADOPTED.**

3. Respondent Warden Eddie Miles's Motion to Dismiss Petition for Writ of Habeas Corpus (Doc. No. [9]) is **GRANTED.**

4. Petitioner Keith Richard Rossberg's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Doc. No. [1]) is **DENIED**.

5. This action is **DISMISSED WITH PREJUDICE**.

6. No certificate of appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 20, 2017

s/Donovan W. Frank

DONOVAN W. FRANK

United States District Judge